

U.S. Department of Labor

Office of the Assistant Secretary for
Veteran's Employment and Training
Washington, D.C. 20210

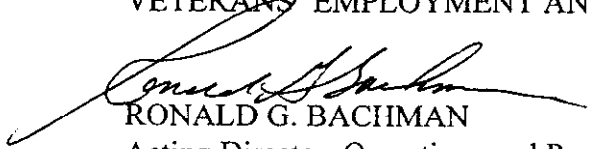


April, 2, 2001

DIRECTOR'S MEMORANDUM NO. 21-01

MEMORANDUM FOR: REGIONAL ADMINISTRATORS AND DIRECTORS FOR
VETERANS' EMPLOYMENT AND TRAINING

FROM:


RONALD G. BACHIMAN

Acting Director, Operations and Programs

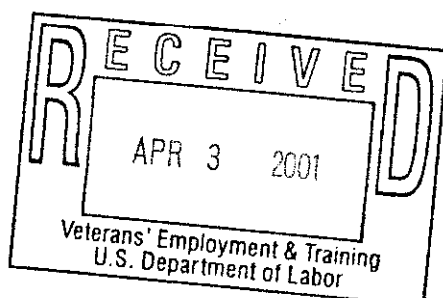
SUBJECT: USERRA Operations Manual Revision: Retention of Uniformed
Services Employment and Reemployment Rights Act (USERRA)
Pension Case Files

REFERENCES: Title 38 U.S.C. Chapter 43 (USERRA)
Director's Memorandum 1-01, as amended

PURPOSE: To provide guidance to be followed concerning retention of case files of USERRA pension claims.

BACKGROUND: The amendment to Director's Memorandum 1-01 dated November 8, 2000, provided guidance on the disposal of USERRA case files. That guidance was that case files were to be destroyed five years after cutoff. Strict adherence to such a disposal schedule could create a problem with respect to certain USERRA pension cases.

Under USERRA, pension entitlements do not fully mature until the person retires and begins receiving retirement checks. However, in some circumstances a USERRA pension claim may be filed and investigated many years before the claimant's rights mature. For example, a young person could leave employment to serve in the active military and return three years later to learn the employer will not give pension credit for the three years. Following an investigation and mediation effort by VETS, the employer may agree to give the person the pension credit. When the person retires 30 years later, the employer could fail to give pension credit for the period of military service due to change in ownership, destruction of records, or whatever reason.



cc: LPA, Hank, Bo, Bill
Lynn, Joe

Such a situation could be quickly resolved if the employer's agreement made 30 years earlier were available in the original USERRA case file. Accordingly, the following guidance is provided for longer duration retention of case files for certain USERRA pension cases only. The guidance in DM 1-01 as amended continues to apply to retention of all other case files.

GUIDANCE: DM 1-01, the change to DM 1-01, and this DM have caused three significant changes to Page IX-3 of the USERRA Operations Manual. In order to avoid confusion, the page has been reproduced to incorporate the changes and is attached. The following guidance is included in the new page.

In pension cases where the claimant has retired within five years after the case file has been cut off and removed from the active file, the case file is to be destroyed five years after cutoff. This is the same as the guidance in DM 1-01, as amended.

If the claimant does not retire within five years after the pension case has been cut off and removed from the active file, the case file will not be destroyed until one of the following occurs: the claimant has retired; or fifty (50) years have passed since the case was cut off and removed from the active file.

ACTION: RAVETS will notify all VETS investigative staff of the procedures to be followed as outlined in this DM and attachment.

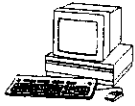
VETS staff remove the current page IX-3 from the USERRA Operations Manual and replace it with the one attached. This DM should be filed at the front of the USERRA Operations Manual.

INQUIRIES: Any questions regarding this DM should be directed to Nick Dawson (202) 693-4711. Questions on records retention and disposal should go to Bob Simmons at (202) 693-4732.

Expiration Date: Until Superseded.

Attachment: Replacement USERRA Operations Manual Page IX-3

- .9 UIMS Closing Codes.** Correct codes must be used when closing cases, because those codes provide the Regional Offices and National Office with statistical information that is used for Congressional Reports and budget purposes. UIMS closing codes follow:



AD - Administrative
CG - Claim Granted
CS - Claim Settled
CW - Claim Withdrawn
NE - Not eligible
NM - No Merit
NR - Not Recommend Representation (non-meritorious claim)
RR - Recommend Representation (valid claim)

- .10 Maintenance of Closed Case Files.** Each Region must have a written plan for maintaining closed case files until they are destroyed. The plan should specify where the closed cases are to be kept and how they are to be filed. The plan should also indicate who is responsible for destroying them and Regional destruction procedures. This plan must comply with the VETS Record Retention Plan.

1. No less than 25% of closed cases will be reviewed by the RO. The review will be performed using the Quality Assurance Review guidelines and timeliness standards in Chapter 13 of the Operations Manual.
2. Case files and case file reviews may be archived where space is available at the RAVET's discretion. A copy of the case file reviews will be maintained at the RO with a reference to archived file location.
3. The procedure for retention and disposal of USERRA case files is the following: cut off and remove from active files in fiscal year when case is closed except in cases where a claimant has requested referral to the Department of Justice or the Office of Special Counsel. In cases where referrals are requested, cut off and remove from active files in fiscal year when litigation is complete, representation is declined or claimant withdraws claim. For non-pension cases, maintain file for five (5) years after cutoff and then destroy. For pension cases where the claimant retires within five years after cutoff, destroy the file five years after cutoff. For pension cases where the claimant does not retire within five years after cutoff, do not destroy the case file until (a) the claimant has retired or, (b) fifty (50) years after cutoff, whichever is sooner.